

EXHIBIT 90 -
Levinson Declaration
for DHHS
(public document)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

VICTOR VOE, by and through his parents
and next friends, Vanessa Voe and Vance
Voe; *et al.*,

Plaintiffs,

v.

THOMAS MANSFIELD, in his official
capacity as Chief Executive Officer of the
North Carolina Medical Board; *et al.*,

Defendants,

and

PHILIP E. BERGER, in his official
capacity as President Pro Tempore of
the North Carolina Senate, and
TIMOTHY K. MOORE, in his official
capacity as Speaker of the North
Carolina House of Representatives,

Intervenor-Defendants.

Case No. 1:23-cv-864-LCB-LPA

DECLARATION IN LIEU OF RULE 30(b)(6) DEPOSITION

Pursuant to 28 U.S.C. § 1746, I, Adam Levinson, Chief Financial Officer, NC Medicaid, Division of Health Benefits, NC Department of Health and Human Services, declare as follows:

1. On August 14, 2024, Intervenor-Defendants noticed the Rule 30(b)(6) deposition of Defendant North Carolina Department of Health and Human Services (“DHHS”). I provide this declaration on behalf of Defendant DHHS in lieu of DHHS designating a deponent to testify by oral examination at deposition as to Intervenor’s Topic for Examination No. 19.

2. The North Carolina Department of Health and Human Services administers and operates North Carolina's Medicaid program. *See* N.C. Gen. Stat. § 108A-54.

3. The budget for administering and operating North Carolina's Medicaid program is limited.

4. The State of North Carolina is responsible for the nonfederal share of the costs of medical services provided under North Carolina's Medicaid program. *See id.* § 108A-54(a).

5. The total expenditures for North Carolina's Medicaid program, net of agency receipts, may not exceed the authorized budget for the Medicaid program. *See id.* § 108A-54(e)(1).

6. DHHS is expressly authorized and required to take necessary actions to amend the Medicaid State Plan and waivers in order to keep the program within the certified budget, consistent with the parameters set by the General Assembly. *See id.* § 108A-54.1A(a).

7. The federal government pays North Carolina for a specified percentage of Medicaid program expenditures. The Federal Medical Assistance Percentage ("FMAP") is used to determine the share of federal funding for Medicaid program expenditures.

8. During the COVID-19 public health emergency, FMAP rates were enhanced. The enhanced FMAP rates meant that the relative federal share of funding for Medicaid service expenditures was higher than it otherwise would have been.

9. The enhanced FMAP rates related to the federal public health emergency continued at their highest level through March 2023. From April 2023 through December 2023, these enhanced FMAP rates were ramped down.

10. As of January 1, 2024, the enhanced FMAP rates related to the federal public health emergency were completely sunset and the FMAP for North Carolina was 65.91%.

11. Effective October 1, 2024, the FMAP rate for North Carolina declined to 65.06%.

12. North Carolina has a Medicaid Contingency Reserve to be used only for budget shortfalls in the Medicaid program. *Id.* § 143C-4-11. The Medicaid Contingency Reserve grew during the COVID-19 public health emergency, when the enhanced FMAP rates were in effect and led to funding surpluses in North Carolina's Medicaid program. The Medicaid Contingency Reserve constitutes a limited amount of money.

13. Funds from the Medicaid Contingency Reserve may be allocated or expended to pay for budget shortfalls only if all of the following criteria are met: (1) there is an act of appropriation by the General Assembly; (2) after the State Controller has verified that all Medicaid program receipts are being used appropriately, the Director of the Budget has found that additional funds are needed to cover a shortfall in the Medicaid budget for the State fiscal year; and (3) the Director of the Budget has reported immediately to the Fiscal Research Division on the amount of the shortfall. *Id.*

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this the 23rd day of September in Raleigh, North Carolina.

Adam Levinson

Signed by:

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Chief Financial Officer
NC Medicaid
Division of Health Benefits
NC Department of Health and Human Services